



Office of the Attorney General
State of Texas

DAN MORALES
ATTORNEY GENERAL

November 24, 1997

Mr. Kevin D. Pagan
Assistant City Attorney
City of McAllen
P.O. Box 220
McAllen, Texas 78505-0220

OR97-2573

Dear Mr. Pagan:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 111122.

The City of McAllen (the "city") received a request for a particular offense report. You contend that the requested information is excepted from disclosure under section 552.108 of the Government Code. We have considered the exception you claim and have reviewed the documents at issue.

Included among the documents you seek to withhold is an accident report form that appears to have been completed pursuant to chapter 550 of the Transportation Code. *See* Transp. Code § 550.064 (officer's accident report). The Seventy-fifth Legislature, repealed, codified, and amended V.T.C.S. article 6701d, concerning the disclosure of accident report information. Act of May 29, 1997, S.B. 1069, §13, 75th Leg., R.S. (to be codified at Transp. Code §550.065). However, a Travis County district court has issued a temporary injunction enjoining the enforcement of section 13 of SB 1069. *Texas Daily Newspaper Association, et al., v. Morales, et al.*, No. 97-08930 (345th Dist. Ct., Travis County, Tex., Oct. 24, 1997) (second amended agreed temporary injunction). A temporary injunction preserves the status quo until the final hearing of a case on its merits. *Janus Films, Inc. v. City of Fort Worth et al.* 163 Tex. 616, 617 358 S.W.2d 589 (1962). The Supreme Court has defined the status quo as "the last, actual peaceable, non-contested status that preceded the pending controversy." *Texas v. Southwestern Bell Telephone Co.* 526 S.W.2d 526, 528 (Tex. 1975). The status quo of accident report information prior to the enactment of SB 1069 is governed by section 47 of article 6701d, V.T.C.S.¹

¹Although the Seventy Fourth Legislature repealed and codified article 6701d as part of the Transportation Code, the legislature did not intend a substantive change of the law but merely a recodification of existing law. Act of

Section 47(b)(1) provides that:

The Department or a law enforcement agency employing a peace officer who made an accident report *is required to release a copy of the report* on request to:

....

(D) a person who provides the Department or the law enforcement agency with two or more of the following:

- (i) the date of the accident;
- (ii) the name of any person involved in the accident; or
- (iii) the specific location of the accident

V.T.C.S. art. 6701d, § 47(b)(1) (emphasis added). Under this provision, a law enforcement agency "is required to release" a copy of an accident report to a person who provides the law enforcement agency with two or more pieces of information specified by the statute. *Id.* It does not appear the requestor has provided the city with two pieces of information. Therefore, the city is not required to release the accident report to the requestor at this time.

You claim that the requested documents are excepted from disclosure under section 552.108, and you cite *Holmes v. Morales*, 924 S.W.2d 920 (Tex. 1996), to support this claim. We note, however, that the *Holmes* court construed the former section 552.108, which is no longer in effect. The Seventy-fifth Legislature made significant, substantive changes to section 552.108. Thus, the former section 552.108 and the *Holmes* interpretation of the former section 552.108, are superseded by the amended section.

The Seventy-fifth Legislature amended section 552.108 of the Government Code to provide in part:

- (a) Information held by a law enforcement agency or prosecutor that deals with the detection, investigation, or prosecution of crime is excepted from the requirements of Section 552.021 if:

May 1, 1995, 74th Leg., R.S., ch. 165, §§ 24, 25 1995 Tex. Sess. Law Serv. 1025, 1870-71. Furthermore, the Seventy Fourth Legislature, without reference to the repeal and codification of V.T.C.S. article 6701d, amended section 47 of article 6701d, V.T.C.S., relating to the disclosure of accident reports. Act of May 27, 1995, 74th Leg., R.S., ch. 894, §1, 1995 Tex. Sess. Law Serv. 4413, 4414. Because the repeal of a statute by a code does not affect an amendment of the statute by the same legislature which enacted the code, the amendment is preserved and given effect as part of the code provision. Gov't Code § 311.031(c). Thus, the amendment of section 47 of article 6701d, V.T.C.S. is the existing law regarding the availability of accident report information, and may be found following section 550.065 of the Transportation Code. See also Act of May 27, 1995, 74th Leg., R.S., ch. 894, §1, 1995 Tex. Sess. Law Serv. 4413, 4414.

(1) release of the information would interfere with the detection, investigation, or prosecution of crime;

(2) it is information that deals with the detection, investigation, or prosecution of crime only in relation to an investigation that did not result in conviction or deferred adjudication;

...

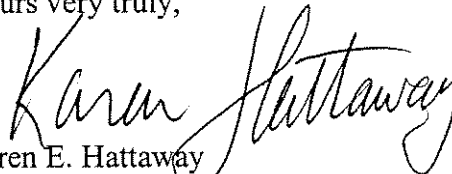
(c) This section does not except from the requirements of Section 552.021 information that is basic information about an arrested person, an arrest, or a crime.

Gov't Code § 552.108. A city employee has noted that the requested documents relate to a case that is "pending . . . [and] has not been sent to [the] DA's office." Under these circumstances, we believe that releasing the documents would interfere with the detection, investigation, and prosecution of crime. We conclude, therefore, that section 552.108(a)(1) is applicable to the requested information.

We note, however, that information normally found on the front page of an offense report is generally considered public. *See generally* Gov't Code § 552.108(c); *Houston Chronicle Publ'g Co. v. City of Houston*, 531 S.W.2d 177 (Tex. Civ. App.--Houston [14th Dist.] 1975), *writ ref'd n.r.e. per curiam*, 536 S.W.2d 559 (Tex. 1976); Open Records Decision No. 127 (1976). Thus, you must release the type of information that is considered to be front page offense report information, even if this information is not actually located on the front page of the offense report. You state that you have released "front page" information, but the information you released does not include a detailed description of the offense. *Houston Chronicle* requires you to include a detailed description of the offense in the front page offense report information that you release. Although section 552.108(a)(1) authorizes you to withhold the remaining information from disclosure, you may choose to release all or part of the information at issue that is not otherwise confidential by law. *See* Gov't Code § 552.007.

We are resolving this matter with an informal letter ruling rather than with a published open records decision. This ruling is limited to the particular records at issue under the facts presented to us in this request and should not be relied upon as a previous determination regarding any other records. If you have any questions about this ruling, please contact our office.

Yours very truly,



Karen E. Hattaway
Assistant Attorney General
Open Records Division

Ref: ID# 111122

Enclosures: Submitted documents

cc: Mr. Roberto R. Ramirez
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(w/o enclosures)